

**NEVADA DEPARTMENT OF  
CONSERVATION & NATURAL RESOURCES**

**STATE ENVIRONMENTAL COMMISSION**

**HEARING ARCHIVES FOR**

**REGULATORY PETITIONS**

**COMMISSION PETITION NO. 96017**

**LEGISLATIVE COUNSEL BUREAU (LCB) FILE NO. R-118-96**

**DOCUMENTS INCLUDED IN THIS FILE:**

**YES SECRETARY OF STATE FILING FORM**

**YES DISCLOSURE STATEMENT PURSUANT TO NRS 233B**

**REGULATORY PETITIONS**

**ORIGINAL DRAFTED BY COMMISSION**

**ADOPTED BY COMMISSION**

**YES AS FILED AND CODIFIED BY LCB**

Secretary of State  
Filing Data

For Filing Administrative  
Regulations

For Emergency  
Regulations Only

Effective Date \_\_\_\_\_

Expiration Date \_\_\_\_\_

\_\_\_\_\_  
Governor's Signature

### State Environmental Commission

Classification [ ] Proposed [ ] Adopted By Agency [xx] Temporary [ ] Emergency [ ]

**Brief description of action:** LCB R-118-96 (Petition 96017) permanently amends NAC 444.842 to NAC 444.976 by adding regulations in NAC 445A that describe the cost recovery conditions in which the Division of Environmental Protection may seek costs for its oversight of corrective action activities. The proposed regulations distinguish between major and minor remediation activities, establish criteria to initiate cost recovery and create methodologies to determine how and when costs will be reimbursed.

**Authority citation other than 233B:** NRS 445A.425, 445A.675 and 445A.690

**Notice date:** August 9, August 11, August 20 and August 26, 1996

**Hearing date:** September 10, 1996

**Date of Adoption of Agency:** September 10, 1996

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED  
BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066  
PETITION 96017  
LCB FILE R-118-96**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 445A.

**1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.**

Petition 96017 (R-118-96) was noticed three (3) times: August 9, August 20, and August 28, 1996 in the Las Vegas Review Journal and the Reno Gazette-Journal newspapers. Public comment was received from the U.S. Department of Energy and the Clark County Health District. In exhibit #6 the federal agency expressed concern over various terms used in the regulation for corrective action at environmentally contaminated sites. The federal agency also believed that the State should recover costs from minor corrective action sites. In exhibit # 11 the Clark County Health District wanted clarification on how staff time was to be recorded for billing purposes. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (702) 687-4670 extension 3117, or writing to the Commission at 333 W. Nye Ln., Room 128, Carson City, Nevada 89710.

**2. The number persons who:**

- |     |                                                  |    |
|-----|--------------------------------------------------|----|
| (a) | <b>Attended each hearing;</b>                    | 35 |
| (b) | <b>Testified at each hearing:</b>                | 15 |
| (c) | <b>Submitted to the agency written comments:</b> | 13 |

Note: Six written comments (exhibits #3, #4, #6, #7, #11 and #13) were received from the Nevada Mining Association, Barrick Goldstrike Mines, U.S. Department of Energy, Nevada Power Company, Clark County Health District, and Sierra Pacific Power Co. No public or business testimony was verbally received at the Environmental Commissions hearing of September 10, 1996, regarding corrective action reimbursement regulations.

**3. A description of how comment was solicited from affected businesses, a summary of their response, and a explanation how other interested persons may obtain a copy of the summary.**

Comments were solicited from affected businesses by the notices in the newspapers, as outlined in #1 and by direct mail to interested persons subscribing to the Commission's mailing list. The Bureau of Corrective Action also notified and sent draft regulations to affected businesses. The Nevada Mining Association expressed concern about the threshold for defining the cut-off for "larger sites". Barrick Goldstrike Mines wanted other corrective actions taken by various Bureaus (mining, water pollution and air quality) to not be subject to this regulation. Nevada Power Co. requested clarification between major and minor corrective action sites. Sierra Pacific Power Co. was supportive of the regulation. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (702) 687-4670 or writing to the Commission at 333 W. Nye Ln., Room 128, Carson City, Nevada 89710.

**4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

The permanent regulation was adopted at the State Environmental Commission hearing on September 10, 1996, with changes to the regulation. Changes were proposed during adoption of the regulation.

**5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:**

- (a) Both adverse and beneficial effects; and
- (b) Both immediate and long-term effects.

The proposed regulations are expected to have a beneficial impact to the regulated businesses by clearly defining the corrective action process and the conditions for cost recovery and by allowing flexibility in oversight. No adverse impacts to businesses are anticipated. The immediate and long term impact will be a simplified corrective action process with an overall reduction in costs for corrective actions. No adverse public impacts are anticipated and no significant short or long term effects are anticipated. The proposed regulations will streamline and simplify the remediation process.

**6. The estimated cost to the agency for enforcement of the adopted regulation.**

There will be no additional cost to the agency as a result of the addition of the proposed regulations.

**7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

There are no other state or government agencies which the proposed regulation overlaps or duplicates.

**8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.**

This regulation is not more stringent than federal regulations. The proposed regulations do parallel some of the regulatory requirements of the U.S. EPA through the RCRA (Resource Cost Recovery Act) and CERCLA (Comprehensive Environmental Response, Compensation, & Liability Act).

**9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

No new fee is proposed nor is a fee increased by this regulation.

**END OF FILING STATEMENT FOR R-118-96**

**ADOPTED PERMANENT REGULATION OF THE  
NEVADA STATE ENVIRONMENTAL COMMISSION**

LCB File No. R118-96

EXPLANATION: Matter in *italics* is new; matter in [ ] is material to be omitted.

AUTHORITY: NRS 445A.425, 445A.675 and 445A.690

**Section 1.** Chapter 445A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this regulation.

**Sec. 2.** *As used in sections 2 to 11, inclusive of this regulation, unless the context otherwise requires, the words and terms defined in section 3 to 9, inclusive, of this regulation, have the meanings ascribed to them in those sections.*

**Sec. 3.** *"Corrective action" means the permanent remedial action that is taken after the release of a hazardous substance, hazardous waste or regulated substance to prevent the element or chemical from posing a threat or potential threat to the present or future health of the public or to the environment.*

**Sec. 4.** *"Cost" or "costs" means all costs and expenses which are incurred and money which is expended by the division and reimbursed at a later date by an owner or operator.*

**Sec. 5.** *"Fee" means an amount of money determined by the division as an estimate of the costs and expenses that will be incurred by the division pursuant to sections 2 to 11, inclusive of this regulation, which is assessed in advance of expenditure by the division.*

**Sec. 6.** *"Major corrective site" means a site which:*

*1. Is the subject of an administrative order issued by the division or a civil action brought by the division against the owner or operator;*

*2. Is a treatment, storage, or disposal site, or any combination thereof, as defined by federal or state law, and has been identified as having contaminated soil or ground water;*

*3. Is the subject of a written corrective action agreement between the division and the owner, operator, or responsible federal agency or agencies;*

*or*

*4. Has an estimated yearly oversight cost to the division which exceeds \$10,000, including all costs incurred by the division for the staff time required, overhead, contract support, equipment and travel.*

**Sec. 7.** *"Minor corrective action site" means a site:*

*1. At which the environmental contamination is relatively confined with minimal actual or potential impact to human health or the environment;*

*2. At which an identified owner or operator is present who is working in cooperation with the*

*division for remediation of the site;*

*3. For which no civil action is pending and no administrative orders have been issued to the owner or operator;*

*4. Which is not under corrective action by the division using federal funding related to leaking underground storage tanks or related state funding;*  
*and*

*5. Which is not a treatment, storage or disposal site under federal law.*

**Sec. 8. "Operator" means a person in control of or has responsibility for the daily operation of a site, business or other operation where a hazardous substance, hazardous waste, or a regulated substance is or has been disposed of, used, or stored.**

**Sec. 9. "Owner" means a person who owns property on which a hazardous substance, hazardous waste, or a regulated substance is or has been disposed of, used, or stored.**

**Sec. 10. 1. The division shall not seek to recover costs or fees for minor sites.**

**2. The division shall seek to recover costs or fees for sites where federal funding for leaking underground storage tanks or state funding is used.**

**Sec. 11. The division may seek reimbursement for costs or assess fees on a cooperative basis with the owner or operator for major sites as follows:**

**1. If the division estimate that the total time for oversight by the division will be less than 240 hours and that the time to achieve site closure will be less than one year, the division shall determine the costs or fees using the average salary of the oversight personnel including fringe benefits, indirect costs, travel costs, and operating expenses.**

**2. If the division estimates that the total time for oversight by the division will be 240 hours or more or that the time to achieve site closure will be one year or more, the division and the owner or operator of the site may enter into a contract with a third person to provide the oversight required by the division. Before such a contract is executed, the division shall enter into a consent agreement with the owner or operator of the site. The agreement must:**

**(a) State the estimated reimbursable costs to be incurred by the division for the oversight;**

**(b) Identify the tasks to be performed by the contractor for the oversight and state the associated costs;**  
**and**

**(c) Include a provision requiring that the costs and fees included in the contract be reevaluated annually on the basis of the projected tasks for each subsequent year.**

**3. If the division determines that it is necessary to dedicate existing or new resources to the oversight of a site, the costs and fees for the project must be stated in a consent agreement between the division and the owner or operator.**

**Such an agreement must include:**

**(a) A provision which identifies the number of employees of the division and the type of skills that they must possess;**

**(b) The salary, fringe benefits, indirect costs, and all related costs of operating, travel, training and equipment for those employees, based upon the state classification system for the type of skills necessary to perform the task;**  
**and**

*(c) A provision requiring that the costs and fees be reevaluated annually on the basis of the projected tasks for each subsequent year.*

*4. If the division collects fees in excess of the expenditures actually made, the division shall apply the excess fees to reduce the amount of fees assessed in a subsequent year.*

**Sec. 12.** NAC 445A.070 is hereby amended to read as follows:

445A.070 As used in NAC 445A.070 to 445A.348, inclusive, *and sections 2 to 11, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 445A.071 to 445A.116, inclusive, have the meanings ascribed to them in those sections.

**Sec. 13.** NAC 445A.117 is hereby amended to read as follows:

445A.117 If any of the provisions of NAC 445A.070 to 445A.340, inclusive, *and sections 2 to 11, inclusive, of this regulation*, or any application thereof to any person, thing or circumstance is held invalid, it is intended that the invalidity not affect the remaining provisions or their application, that can be given effect without the invalid provision or application.

END OF LCB FILE No. 118-96 (PETITION 96017)